

INVITATION FOR BIDS



Howard County, Maryland
OFFICE OF PURCHASING
6751 Columbia Gateway Drive, Suite 501
Columbia, Maryland 21046

HEAVY EQUIPMENT LEASE-PURCHASE FINANCING

BID NUMBER: 2011-27

OPENING: DECEMBER 22, 2010 @ 11:00 AM

BUYER: Michael Decker, Buyer

PHONE: (410) 313-6375

EMAIL: mdecker@howardcountymd.gov



Formal IFBs and IFB Results are available on the Website:

www.howardcountymd.gov/purchasing

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**IMPORTANT: ADVISE THE ISSUING OFFICE IMMEDIATELY
IF ANY OF THE ABOVE DOCUMENTS ARE NOT ENCLOSED.**

DOCUMENT A

KEY INFORMATION SUMMARY

IFB Number:	2011-27
IFB Name:	Heavy Equipment Lease Financing
Issue Date:	December 7, 2010
Buyer:	Michael V. Decker, Buyer mdecker@howardcountymd.gov 410-313-6375
Pre-Bid Date:	N/A
Pre-Bid Location and Registration:	N/A
Questions Due and to Whom:	Questions due no later than 4:00 p.m. on December 15, 2010 Submit questions to: Michael Decker at mdecker@howardcountymd.gov Questions must be submitted in writing to the Buyer at the email address listed above.
Bid Due:	Wednesday, December 22, 2010 @ 11:00 a.m.
Mail/Deliver Bids to the Issuing Office:	Office of Purchasing 6751 Columbia Gateway Dr., Ste. 501 Columbia, MD 21046 410-313-6370
Agreement Term:	Five Years (Subject to the approval of the County Council)
Bid Deposit/ Performance Bond:	N/A
EBO Subcontracting Participation:	N/A

MINORITY BUSINESS ENTERPRISES are encouraged to respond to this solicitation. For more information, please contact the Equal Business Opportunity Coordinator at 410-313-6370.

IMPORTANT NOTICE REGARDING ADDENDA

Addenda to solicitations often occur prior to bid opening. It is the potential Contractor's responsibility to frequently visit the Office of Purchasing web site for updates to solicitations.

www.howardcountymd.gov/purchasing

DOCUMENT B

PURCHASE ORDER TERMS AND CONDITIONS

The following terms and conditions apply to all Purchase Orders issued by Howard County and are applicable to all purchases made as a result of this solicitation.

- 1 No purchase of materials, supplies, equipment, and/or services will be recognized unless made through the Office of Purchasing.
- 2 The County may at any time insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice or course of dealing to the contrary.
- 3 The terms and conditions of sale as stated in this Purchase Order govern in the event of conflict with any terms of the Contractor's bid, and are not subject to change by reason of any written or verbal statements by the Contractor or by any terms stated in the Contractor's acknowledgement without prior written authority from the Office of Purchasing.
- 4 If the price is omitted on the Purchase Order, except where the Purchase Order is given in acceptance of quoted prices, it is agreed that Contractor's price will be the lowest prevailing market price and in no event is this Purchase Order to be filled at higher prices than last previously quoted or charged without prior written authority from the Office of Purchasing.
- 5 If requested, the Contractor shall acknowledge the order promptly and provide a delivery date.
- 6 Invoices must show Delivery Address and Purchase Order number, and indicate if it represents partial or complete billing. Separate invoices must be rendered for each Purchase Order. Invoices shall include the following information:
 - 6.1 Contractor's name;
 - 6.2 Address;
 - 6.3 Federal tax identification number;
 - 6.4 Contract number, if applicable (the first two digits are 44XXXXXXXXXX);
 - 6.5 Purchase Order number (the first digit is 2XXXXXXXXXX);
 - 6.6 Contract line number, if applicable;
 - 6.7 Unit price and extended price (if applicable, the unit price must match a line on the Contract); and
 - 6.8 Description of goods provided and/or services performed.
- 7 The County has the right to refuse to make payment on any invoice unless and until verification of receipt by the County can be determined. The County's payment for any material shall not constitute acceptance of the material or a waiver of any of the County's rights.
- 8 No freight/delivery/fuel charges will be paid by the County unless specifically provided for in the Purchase Order.
- 9 The County will not pay for packaging, boxing or cartage. Damage resulting from improperly packaged material will be charged to the Contractor.
- 10 The County reserves the right to cancel this Purchase Order or, any part thereof, without obligation, if delivery is not made or services completed at the time(s) specified.
- 11 This Purchase Order shall be governed and construed in accordance with the law of the State of Maryland without regard to any choice of law principles.

- 12 All deliveries and services furnished under this Purchase Order must be of the quality specified or in the event no quality is specified, must be the best of their respective kinds, and will be subject to inspection and approval of the County within a reasonable time after delivery of goods or completion of services. When manufacturing specifications are referred to in this Purchase Order, such specifications shall be deemed to be an integral part hereof as if duly set out herein. Goods and services shall be replaced at no additional charge to the County if they prove to be defective and/or not in accordance with specifications. Rejected materials shall be returned at the risk and expense of the Contractor. If the County does not desire replacement, the Contractor shall issue a full credit.
- 13 Requirement as to Materials, Contractor's Responsibilities and Warranties:
- 13.1 The Contractor warrants and agrees that all materials supplied hereunder shall be manufactured and produced in compliance with the laws, regulations, codes, terms, standards and/or requirements of all Federal, State and local authorities and all other authorities having jurisdiction, and that performance of this Purchase Order shall be in accordance with the above laws, regulations, codes, terms, standards, and/or requirements, and agrees, upon request, to furnish the County a certificate of compliance in such forms as the County may require.
- 13.2 The Contractor warrants that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the goods shipped or ordered and Contractor agrees to hold the County harmless from any and all liability, loss or expense occasioned by such a violation.
- 14 The quantity of materials, and/or services, must not be exceeded without prior written authority from the Office of Purchasing.
- 15 Substitutions are not allowed without prior written authority from the Office of Purchasing.
- 16 If required, a sufficient number of shop drawings and/or catalog data shall be furnished to the County within 15 days (unless otherwise specified) for necessary approval.
- 17 In the event any article sold and delivered hereunder shall be defective in any respect whatsoever, the Contractor will indemnify and save harmless the County from all losses or expenses by reason of all accidents, injuries or damages to persons or property resulting from the use of such article or which are contributed to by said defective condition.
- 18 The Contractor shall indemnify and hold harmless the County, its employees, agents and officials from any and all claims, losses or expenses resulting from any accidents, injuries or damages to persons or properties, suits or demands including reasonable attorney fees which may be made against the County, its employees, agents or officials resulting from any act or omission committed in the performance of the duties imposed by and performed under the terms of this Purchase Order by the Contractor or anyone under agreement with the Contractor to perform duties under this Purchase Order. The Contractor shall not be responsible for acts of negligence or willful misconduct committed by the County, its employees, agents and officials. Any property or work to be provided by the Contractor under this Purchase Order will remain at the Contractor's risk until written acceptance by the County; and the Contractor will replace, at the Contractor's expense, all property or work damaged or destroyed by any cause whatsoever.
- 19 Liability for Damage: If this Purchase Order calls for work to be performed upon property owned or controlled by the County it is understood and agreed that:
- 19.1 Mechanic's Liens: The Contractor will keep the premises and work free and clear of all mechanic's liens, and furnish the County certificate and waiver as provided by law.

- 19.2 Casualty Losses: The work will remain at the Contractor's risk prior to written acceptance by the County and the Contractor will replace at its own expense all work damaged or destroyed by fire, force or violence of the elements or any cause whatever.
- 19.3 Injury to Employees: The Contractor will indemnify, save harmless and defend the County from all liability for loss, damage or injury to person or property in any manner arising out of, or incident to, the performance of this Purchase Order.
- 19.4 Workmen's Compensation: The Contractor will indemnify, save harmless and defend the County from any and all claims, demands or suits made or brought against the County on account of any of the terms or provisions of the Workmen's Compensation Law of the State in which said work is to be performed, effective on the date of the Purchase Order and subsequent amendments.
- 20 Bankruptcy: In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against the Contractor including any proceedings under the Chandler Act, or in the event of the appointment, with or without the Contractor's consent, of an assignee for the benefit of creditors or of a receiver then the County shall be entitled to cancel any unfilled part of this Purchase Order without any liability whatsoever.
- 21 Equal Employment Opportunity: The County requires that the Contractor not discriminate against any employee or applicant for employment because of race, creed, religion, physical or mental handicap, color, sex, national origin, age, occupation, marital status, political expression, sexual orientation or personal appearance. The Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated fairly and equally during employment with regard to the above. The Contractor warrants that, within the previous 12 months, it has not engaged in unlawful employment practices as set forth in Section 12.208 of the Howard County Code, Section 19 of Article 49B of the annotated Code of Maryland or Sections 703 and 704 of Title VII of the Civil Rights Act of 1964.
- 22 Material Safety Data Sheet (MSDS): If the work to be performed under this Purchase Order requires the use of any product that contains any ingredient that could be hazardous or injurious to a person's health, a MSDS must be provided to the Office of Purchasing, 6751 Columbia Gateway Drive, Suite 501, Columbia, Maryland 21046.
- 23 Termination
- 23.1 Termination for Convenience: The County may terminate this Purchase Order, in whole or in part, if the County determines that such termination is in the best interest of the County, without showing cause, upon giving at least 30 days written notice to the Contractor. The County shall pay all reasonable costs incurred by the Contractor up to the date of termination. However, in no event shall the Contractor be paid an amount which exceeds the price bid for the work performed. The Contractor shall not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.
- 23.2 Termination for Default: When the Contractor has not performed or has unsatisfactorily performed one or more material terms of the Purchase Order, the County may terminate the Purchase Order for default. Upon termination for default, payment may be withheld at the discretion of the County. Failure on the part of the Contractor to fulfill the contractual obligations shall be considered just cause for termination of the Purchase Order. If the damages exceed the undisbursed sums available for compensation, the County shall not be obligated to make any further disbursements hereunder. The Contractor will be paid for work satisfactorily performed prior to termination less any excess costs incurred by the County in reprocurring and completing the work.

DOCUMENT C

GENERAL CONDITIONS

1 DEFINITIONS:

- 1.1 Addenda – Formal alteration of a solicitation or Agreement in writing (When applicable, Addenda are available on the Office of Purchasing website.)
- 1.2 Alternate Bids – A second bid for a single item that intentionally offers a substitute product or service that varies from the stated specifications
- 1.3 Bid – All information submitted by the Contractor in response to this solicitation
- 1.4 Bidder – Any entity that submits a response to this solicitation
- 1.5 Buyer – The County's Purchasing Representative for the resulting Agreement
- 1.6 Agreement – The Invitation For Bid documents and any addenda, the Contractor's response to this solicitation, and subsequent Purchase Orders
- 1.7 County – Howard County, Maryland
- 1.8 County Purchasing Agent – The Chief Administrative Officer for the County
- 1.9 Contractor – Any bidder; most often the successful bidder
- 1.10 Designee – Specifically appointed alternate signatory or decision maker
- 1.11 Invitation For Bid (IFB) – All documents identified in the Table of Contents, including any addenda
- 1.12 County's Technical Representative – The County's representative that serves as the technical manager for the Agreement
- 1.13 Equal Business Opportunity (EBO) – The County's minority business enterprise program
- 1.14 Issuing Office – The Howard County Office of Purchasing
- 1.15 Purchase Order – The document by which the Contractor receives formal notification to perform work or deliver goods
- 1.16 Solicitation – The Invitation For Bid
- 1.17 User Agency – County department or office for which goods and/or services are being purchased

2 RESERVATIONS:

- 2.1 The County Purchasing Agent or Designee reserves the right to reject any or all bids or parts of bids when, in the County Purchasing Agent's/Designee's reasoned judgment, the public interest will be served thereby.
- 2.2 The County Purchasing Agent or Designee, with the approval of the County Executive, may waive formalities or technicalities in bids as the interest of the County may require.
- 2.3 The County Purchasing Agent or Designee reserves the right to increase or decrease the quantities to be purchased at the prices bid. The quantity intended to be purchased and the period and percentage amount of any such reservation will be stated in the solicitation.
- 2.4 The County Purchasing Agent or Designee reserves the right to award Agreements or place orders on a lump sum or individual item basis, or such combination as shall, in the County Purchasing Agent's/Designee's judgment, be in the best interest of the County.
- 2.5 The County Purchasing Agent or Designee may waive minor differences in specifications provided these differences do not violate the specification intent nor materially affect the operation for which the item or items are being purchased, nor increase estimated maintenance and repair cost to the County.

- 2.6 Bids which show any omission, irregularity, alteration of forms, additions not called for, conditional or unconditional unresponsive bids, or bids obviously unbalanced may be rejected.
- 2.7 The County Purchasing Agent or Designee reserves the right to reject any conditional bid(s).
- 3 **COMPETITION:**
- 3.1 The name of any manufacturer, trade name, or manufacturer or vendor catalog number mentioned in this solicitation is for the purpose of designating a minimum standard of quality and type. Such references are not intended to be restrictive. Bids will be considered for any brand that meets or exceeds the quality of the specifications unless otherwise stated in the solicitation.
- 3.2 A Contractor may offer only one price on each item. Submission by a single Contractor of more than one price for a single item shall be sufficient cause for rejection of all prices for that item submitted by the Contractor. Alternate bids are prohibited and will be rejected.
- 4 **PERIOD OF VALIDITY:** Unless otherwise specified, all formal bids submitted shall be irrevocable for 120 days following the bid opening date, unless the Contractor, upon request of the County Purchasing Agent or Designee, agrees to an extension. Bids may not be withdrawn during this period.
- 5 **PROTEST:** Any protest concerning the award of an Agreement shall be decided by the County. Protests shall be made in writing to the Issuing Office and shall be filed within ten days of issuance of award notification. A protest is considered filed when received by the Issuing Office. The written protest shall include the name and address of the protestor, identification of the procurement, a statement of the specific reason for the protest and supporting exhibits. The Issuing Office will respond to the written protest within ten days. The County Purchasing Agent's/Designee's decision relative to the protest shall be final.
- 6 **DISPUTES:** In cases of disputes as to whether or not an item or service quoted or delivered meets specifications, the decision of the County Purchasing Agent or Designee shall be final and binding on all parties. All other disputes arising under or related to the Agreement will be resolved, to the extent possible, by negotiation and settlement between the parties. Pending resolution, the Contractor shall proceed diligently with performance of the Agreement unless otherwise directed in writing by the County Purchasing Agent or Designee.
- 7 **AUTHORITY:** Solicitations are issued pursuant and subject to the provisions of Article VIII, Howard County Charter; Sections 4.100 through 4.123, Howard County Code, 2003; and the rules and regulations as prescribed by the County.
- 8 **FAIR LABOR STANDARDS ACT:** All goods shipped against this order must be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended including Section 6, 7 and 12, and regulations and orders issued under Section 14 thereof.
- 9 **UNIT PRICES:** Unless the Contractor clearly shows that it is the intent that a reduced total price is being offered on the basis of receiving an award of all items covered by the total, any totals should be the actual sum of the extension of unit prices. Otherwise, in the event of any discrepancy between a unit price(s), extended price(s), and/or total price(s), unit prices will govern and the bid will be refigured accordingly.

- 10 NON-WAIVER: Any waiver of any breach of covenants herein contained to be kept and performed by the Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the County from declaring a forfeiture for any succeeding breach either of the same condition of covenant or otherwise.
- 11 PATENTS: If applicable, the Contractor shall defend any suit or proceeding brought against the County so far as based on a claim on any equipment, or on any part thereof, furnished under this Agreement which constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Contractor's expense) for the defense of same, and the Contractor shall pay all damages and costs awarded therein against the County. In case said equipment or any part thereof, in such suit is held to constitute infringement and the use of said equipment or part is enjoined, the Contractor shall, at its own expense, either procure for the County the right to continue using said equipment or part, or replace same with non-infringing equipment or part, or modify so that it becomes non-infringing.
- 12 MARYLAND REGISTRATION: Contractors must be registered to do business in, and must be in good standing in, the State of Maryland. Contractors not registered must obtain registration information from the Maryland Department of Assessments and Taxation (DAT) website at: www.dat.state.md.us/ or by calling (410) 767-1340 or Toll Free (888) 246-5941.
- 13 AVAILABILITY OF FUNDS: By submitting a bid in response to this solicitation, a bidder shall be deemed to evidence its understanding that the Lessee's obligations under the Lease specifically are subject to annual appropriation of funds.
- 14 INTEGRATION AND MODIFICATION: This solicitation, the Contractor's response to this solicitation, subsequent Purchase Order(s), and, if applicable, the legal Agreement represents the entire understanding between the parties. Any additions or modifications shall only be made in writing and executed by both parties.
- 15 NON-ASSIGNMENT OF AGREEMENT: Neither the County nor the Contractor shall assign, sublet or transfer its interest or obligations under the resulting Agreement to any third party, without the written consent of the other. Nothing herein shall be construed to create any personal or individual liability upon any employee, officer or elected official of the County, nor shall the resulting Agreement be construed to create any rights hereunder in any person or entity other than the parties to this Agreement.
- 16 AGREEMENT:
- 16.1 The County and Contractor must execute an Agreement resulting from the award of this solicitation. This process typically takes approximately three weeks from the date the successful Contractor is identified. In order to expedite this process, a sample standard Agreement is attached for review as part of this solicitation. Exceptions, if any, to the County's standard Agreement (Appendix 3) must be noted in the bid to be considered during evaluation. Exceptions to the County's standard Agreement may result in rejection of the bid.
- 16.2 Do not fill in or sign the sample Agreement attached as Appendix 3. The County will prepare an Agreement specific to this solicitation for execution by the successful Contractor.

17 PUBLIC INFORMATION/PROPRIETARY/CONFIDENTIAL INFORMATION:

- 17.1 The County operates under a public information law, which permits access to most records and documents.
- 17.2 Bids will be available for public inspection after the award announcement, except to the extent that a Contractor designates trade secrets or other proprietary data to be confidential. Material designated as confidential must be readily separable from the remainder of the bid to facilitate public inspection of the nonconfidential portion of the bid. A Contractor's designation of material as confidential will not necessarily be conclusive, and the Contractor may be required to provide justification why such material should not be disclosed, on request, under the Maryland Access to Public Records Act, State Government Article, Sections 10-611 through 10-628, of the Annotated Code of Maryland.

DOCUMENT D

HEAVY EQUIPMENT LEASE FINANCING

GENERAL SPECIFICATIONS

- 1 SCOPE: Howard County, Maryland, (the “County” or the “Lessee”), seeks a Contractor (the “Contractor” or the “Lessor”), to furnish lease financing services which will allow the County to purchase, warrant and maintain the following heavy equipment: 2011 (New) Caterpillar 950H Wheel Loader and 2011(New) 329DL Hydraulic Excavator.
- 2 BACKGROUND:
 - 2.1 Howard County Government is a general purpose government providing a wide variety of governmental and enterprise services throughout the county. The County operates, among other activities, primary and secondary schools, a community college, recreation and parks programs, detention center, a highway system, landfill, fire and emergency services, and law enforcement programs.
 - 2.2 The County authorizes expenditures either through the annual operating budget or through the capital budget. Much of the capital budget is financed by the County’s General Obligation Bonds, which have the highest rating (AAA) from Moody’s Investors Service, Inc., Standard & Poor’s, and Fitch Ratings.
 - 2.3 Most equipment expenditures are financed either on a pay-as-you-go basis or through the bond-financed capital program; however, the County has previously financed certain equipment under a lease-purchase financing arrangement.
 - 2.4 Because of the extensive amount of lease and bond financing undertaken by the County on an annual basis, this lease-financing is NOT A “BANK QUALIFIED LOAN”.
 - 2.5 The documentation included as Appendices 1, 2 and 3 to this solicitation will be used by the County for the Lease. There will be no changes to the Lease documentation included as Appendix 3 for this financing other than the rates, amounts, and equipment descriptions.
- 3 INQUIRIES AND ADDENDA:
 - 3.1 The Buyer in the Issuing Office is the sole point of contact for this solicitation. Questions must be addressed in writing to the Buyer and delivered no later than the date shown in the Key Information Summary, Document A.
 - 3.2 Addenda to solicitations often occur prior to bid opening, sometimes within a few hours of the opening. It is the potential Contractor’s responsibility to frequently visit the Office of Purchasing website at www.howardcountymd.gov/purchasing to obtain Addenda.
 - 3.3 The County will assume no responsibility for oral instructions or suggestions. All official correspondence in regard to the specifications shall be directed to and will be issued by the County Purchasing Agent or Designee.

- 4 TERM OF LEASE: The term of the lease shall be for five years commencing on or about the date the equipment is accepted by the County. Since this is a multi-year lease requiring the commitment of funds for more than one fiscal year, the approval of the lease agreement by the County Council is required prior to the execution of the lease.
- 5 METHOD OF AWARD:
- 5.1 Bids shall be submitted using the attached Document G. The Contractor must propose tax-exempt fixed rates for each term in column (b). Award will be based on the bid with the lowest total weighted average calculated according to the formula in Document G.
- 5.2 In addition to the rates, each Contractor shall attach an amortization schedule for the amounts and terms specified above using their bid rates. The first payment will be calculated based on 181 days (using the 30/360 convention) from the date the equipment is accepted by the County. Thereafter, there will be level debt service.
- 6 BILLING AND PAYMENT:
- 6.1 The County will make semi-annual payments to the Contractor in accordance with the amortization schedule submitted with the bid and approved by the County. The Payment Dates begin on August 1, 2011 and continue on February 1 and August 1 thereafter for the applicable term described in above. Should a Payment Date not be a banking business day, payment will be due on the next banking business day.
- 6.2 Payments to the Contractor will be based solely on the fixed interest rates proposed by the Contractor in column (b) of Document G. The Lessee will not pay any breakage fees or other fees or spreads.
- 6.3 The Contractor shall submit separate invoices for each Purchase Order issued. Invoices shall be sent to the Office of Central Services, Central Fleet Division, 8301 Stanford Blvd. Columbia, MD 21046. Invoices in the proper form and approved by the County shall be paid by the County within 30 days of receipt.
- 6.4 Each invoice shall include the following information:
- 6.4.1 Contractor's name;
- 6.4.2 Address;
- 6.4.3 Federal tax identification number;
- 6.4.4 Contract number, if applicable (the first two digits are 44XXXXXXXXXX);
- 6.4.5 Purchase Order number (the first digit is 2XXXXXXXXXX);
- 6.4.6 Contract line number;
- 6.4.7 Unit price and extended (the unit price must match a line on the contract); and
- 6.4.8 Description of goods provided and/or services performed.
- 6.5 The proper form of County invoices requires that the information enumerated above be included on all invoices. In order to facilitate prompt payment, invoices must contain the prescribed information in order to be successfully entered into the County's financial

system. Invoices without the necessary information may be returned for correction prior to payment. The County reserves the right to approve invoices, in its sole discretion, and to request such detail and additional information as the County, in its discretion deems appropriate.

- 6.6 The County reserves the right to make payments via electronic funds transfer (a.k.a. ACH) on Agreements for which this payment vehicle is appropriate.
- 6.7 All amounts, costs, or prices referred to herein pursuant to this Agreement shall be United States of America currency.

DOCUMENT E

HEAVY EQUIPMENT LEASE-PURCHASE FINANCING

TECHNICAL SPECIFICATIONS

1. FINANCE TERMS:

- 1.1 The County invites sealed bids for the tax-exempt financing of the equipment in the aggregate principal amount of \$742,377.00 (the "Aggregate Principal Amount"), to be amortized semi-annually using the following terms on a tax-exempt basis:
 - Amount – \$742,377.00
 - Term – 5 Years
 - Interest Only Payment Date – 08/01/2011
 - Number of Principal and Interest Payments – 9
 - First Principal and Interest Payment Date – 2/1/2012
 - Final Principal and Interest Payment – 2/1/2016
 - 30/360 convention
- 1.2 Equipment to be Financed – 2011 (New) Caterpillar 950H Wheel Loader and 2011 (New) 329DL Hydraulic Excavator. See Appendix 1 for an equipment quote with cost, description and vendor. See Appendix 2 for a Sample Form of Amortization Schedule.
- 1.3 This tax-exempt equipment lease financing is expected to close March 2011. The documents to be prepared by the County and executed in connection therewith (collectively, the "Standard Lease Documents"), are substantially in the form attached hereto as Appendix 3. There will be no changes to the Standard Lease Documents other than the rates, amounts, and equipment descriptions. (The Standard Lease Documents and all other documents required to be executed under the Lease are, collectively, the "Lease Documents".)
- 1.4 Under the Lease, the Contractor will acquire, directly or through a third-party lessor providing the required financial resources, designated by the Contractor and approved by the County (the "Lessor's Designee"), the equipment required by the County. The Contractor will lease the equipment to the County. The Lease will provide the Contractor or its subsequent assignee the right to lease payments payable by the County under the Lease.
- 1.5 At the end of the lease period the County will acquire full and unencumbered title to the equipment free and clear of all liens and encumbrances created by or arising through or under the Lessor.
- 1.6 The Contractor shall be required to finance all and not less than all of the equipment approved for financing by the County in accordance with the terms stated in 1.1 above. equipment acquisitions are consolidated to permit a single financing.
- 1.7 The Contractor shall provide sufficient funds to place the order for the specified equipment, and make full payment upon delivery and acceptance of the equipment. The form of the lease shall conform to the actual terms of the lease and shall commence with the County's acceptance of the specified equipment.

- 1.8 Appendix 3 includes Standard Lease Documents for the County. The County is responsible for preparing the Equipment Lease-Purchase Agreement. There will be no changes to the Standard Lease Documents other than the rates and amounts.
2. ADDITIONAL LEASE DOCUMENTS: The Contractor is responsible for preparing the following additional Lease Documents, which must be in forms reasonably acceptable to the County:
 - 2.1 Certificate of Lessor, certifying Contractor's acquisition of its interest in the Lease and/or the respective Equipment Schedules, certifying the purchase price including any payments made in respect of accrued interest, acknowledging Section 19 – Assignment of the Equipment Lease-Purchase Agreement, and certifying the fair market value of the Lease and/or the respective Equipment Schedules.
 - 2.2 Payment Certificate, certifying the date, amounts, and recipients (e.g., Contractors or agencies being reimbursed) of the payments made by Contractor under the Lease.
 - 2.3 Notice of Assignment, in accordance with Section 19 – Assignment of the Equipment Lease-Purchase Agreement, identifying the Lease and/or Equipment Schedules being assigned, the name, address and contact information for the Assignee, the date of the assignment, and the actual consideration paid for the assignment.
 - 2.4 After the award of the Contract, the County will forward the Lease Documents to the Lessor or Lessor's Designee for signature. On the Funding/Closing Date, all documents will be executed and the Lessor or Lessor's Designee will make payments due directly to the vendors. The Lessor then may file the required documents with the appropriate governmental entity to perfect its security interest.
 - 2.5 Payments of principal and interest shall not be subject to optional prepayment, and will be subject to termination only as set forth in the Lease.
3. OPTIONAL PREPAYMENT TERMINATION: There are no provisions for optional prepayment of this Lease, and the Lease is subject to termination only as set forth in the Lease Documents.
4. BOND INSURANCE: The Contractor may not secure bond insurance on the Lease or lease payments or fractionalized interests or participations therein.
5. RATINGS: The Contractor may not secure ratings on the Lease or lease payments or fractionalized interests or participations therein.
6. RESTRICTION ON RESALE: The Contractor, or by acceptance of an assignment agreement from Contractor, the Assignee(s), shall be deemed to certify that:
 - 6.1 The Contractor or the Assignee is purchasing for its own account or, after obtaining the prior written consent of the County as required by Section 19 of the Lease, intends to sell or distribute fractionalized interests or participations in the right to receive lease payments only to individuals or entities that meet the requirements of subsections (b) and (c), below, and that have no intention of redistributing such interests or participations;
 - 6.2 The Contractor or the Assignee has knowledge and experience in financial and business matters that renders it capable of evaluating the merits and risks of the investment in the Lease and has received such information as it has deemed necessary to make such an evaluation;

- 6.3 The Contractor or the Assignee is able to bear the economic risk of investment in the Lease; and
- 6.4 If the Contractor or the Assignee, after obtaining consent of County, sells or distributes, in fractionalized interests or participations, its interest in its right to receive payment of the aggregate amount of the monthly draw, it shall limit such sale or distribution to fractionalized interests or participations of \$100,000 or more, and it shall limit such sale or distribution to no more than 35 "sophisticated investors." Neither the Contractor nor the Assignee may undertake a public offering of its interest in payments due under the Lease.
- 6.5 In addition, should the Contractor or its Assignee contemplate the sale or distribution in fractionalized interests or participations of its right to receive lease payments, Contractor must provide the County Solicitor with a copy of all offering materials thirty (30) days prior to the time any such interests or participations are offered for sale or distribution.

THE COUNTY HAS NOT PREPARED AN OFFICIAL STATEMENT OR OTHER OFFERING MATERIALS IN CONNECTION WITH THIS SOLICITATION OR THE LEASE AND DOES NOT INTEND TO PREPARE SUCH MATERIALS.

IT IS THE COUNTY'S INTENT THAT THE RESTRICTIONS ON RESALE CONTAINED IN SECTION 19 OF THE EQUIPMENT LEASE-PURCHASE AGREEMENT PRECLUDE THE USE OF CERTIFICATES OF PARTICIPATION.

7. DOCUMENTS: The County, from time to time, shall provide certificates of essential use, certificates of acceptance, IRS Forms 8038G, financing statements, and such other documents as reasonably may be necessary to effect the purposes of the Lease.
8. TAX OPINION: The County shall provide at closing an opinion of tax counsel as to the excludability from gross income for federal income tax purposes of interest payments under the Lease.
9. PRICE PAGE: A Contractor's failure to submit an executed Price Page attached as Document G and a completed, executed copy of a Bid/Proposal Affidavit attached as Document H, to this solicitation may result in rejection of the bid.
10. AVAILABILITY OF FUNDS: By submitting a bid in response to this solicitation, a bidder shall be deemed to evidence its understanding that the Lessee's obligations under the Lease specifically are subject to annual appropriation of funds (see Section 5 of the Equipment Lease-Purchase Agreement).

DOCUMENT F

SUBMISSION REQUIREMENTS

1 INSTRUCTIONS:

- 1.1 All bids must be clearly identified on the front of the envelope or top of the carton with the solicitation number, title of the solicitation and the due date and time.
- 1.2 All bids must be signed by an authorized officer or agent of the Contractor submitting the bid and delivered in sealed envelopes or cartons to the Issuing Office no later than the time and date indicated. Bids received after the time and date indicated will not be accepted or considered.
- 1.3 The submission of a bid shall be considered an agreement to all the terms, conditions, and specifications provided herein and in the various bid documents, unless specifically noted otherwise in the bid.
- 1.4 Each bid shall be accompanied by the Affidavit regarding price fixing, gratuities, bribery, and discriminatory employment practices in accordance with Section E.1.c. (3)(b) of the Howard County Purchasing Manual. When the Contractor is a corporation, a duly authorized representative of said corporation shall execute the Affidavit. The Affidavit is provided in the solicitation package.
- 1.5 If a discrepancy in or omission from the specifications is found, or if a Contractor is in doubt as to their meaning, or feels that the specifications are discriminatory, the Contractor shall notify the County Purchasing Agent or Designee in writing not later than five days prior to the scheduled opening of bids. Exceptions taken do not obligate the County to change the specifications. The County Purchasing Agent or Designee will notify all Contractors of any changes, additions or deletions to the specifications by addenda posted on the Office of Purchasing web site (www.howardcountymd.gov/purchasing).

2 BID DOCUMENTS: The required bid documents shall be submitted, in duplicate (original and one copy), to the Issuing Office no later than the opening date and time specified in Document A. Failure to return required documents may be cause for rejection of the bid. This solicitation requires the return of the following documents:

- 2.1 Bid Document "G", (Price Pages),
- 2.2 Bid Document "H" (Affidavit),

3 RECYCLED PAPER: Contractors are encouraged to submit responses to this solicitation on recycled and recyclable paper, printed on both sides, where practicable.

4 EXCEPTIONS: If the Contractor cannot meet the terms, conditions and/or specifications of the solicitation, the Contractor must furnish a statement on company letterhead giving a complete description of any exceptions to the terms, conditions, and specifications. Failure to furnish the statement means that the Contractor agrees to all terms, conditions and specifications.

DOCUMENT G

PRICE PAGE NO. 1

TITLE: HEAVY EQUIPMENT LEASE-PURCHASE FINANCING

TO: HOWARD COUNTY OFFICE OF PURCHASING
6751 Columbia Gateway Drive, Suite 501
Columbia, MD 21046

The undersigned agrees to furnish and deliver the above goods and/or services in accordance with the specifications issued for same, and subject to all terms, conditions, and requirements in the solicitation, and in the various bid documents:

COMPANY NAME: _____

FEDERAL TAX IDENTIFICATION NO./SOCIAL SECURITY NO.: _____

ADDRESS: _____

(City) (State) (Zip Code)

TELEPHONE: _____ **FAX:** _____

E-MAIL ADDRESS: _____

Is the company a certified Minority-, Women-, or Disabled-Owned Business Enterprise? ☐ YES ☐ NO
If yes, indicate the type of minority ownership:

☐ African American ☐ Asian American ☐ Disabled ☐ Eskimo
☐ Female ☐ Hispanic ☐ Native American

If yes, indicate the certification(s) held:

☐ Howard County Government ☐ MD Dept. of Transportation ☐ City of Baltimore ☐ Other

Certification Number(s) and Expiration Date(s): _____

Does the company have a written non-discrimination policy which includes race, creed, religion, handicap, color, sex, national origin, age, occupation, marital status, political opinion, sexual orientation, gender identity and expression, personal appearance, familial status or source of income?

☐ YES ☐ NO

The County Purchasing Agent or Designee reserves the right to request such documentation, if desired, at a later date.

Payment Terms: _____

(The payment terms shall be considered net 30 days unless otherwise indicated. The payment terms will be considered in determining the award.)

☐ We wish to submit a "NO BID" at this time, but request that our company remain on the Contractors list for future solicitations.

DOCUMENT G

PRICE PAGE NO. 2

COMPANY NAME: _____

NIGP Code/Product Code: 94654

			(a)	(b)	(c)	(d)
Type of Lease	Equipment	Term	Amount Expected to be Financed	Fixed Rate	Total	Weighted Average
Tax-exempt	Loader, Caterpillar 950H	5 Years	\$393,814.00	%		
Tax-exempt	Excavator, Caterpillar 329DL	5 Years	\$348,563.00	%		
		Total	\$742,377.00			

Instructions to complete the bid table above:

Column (b) To be completed by bidder.

Column (d) Calculate the weighted average of the rates in column (b):

Multiply column (a) by column (b). Put answer in column (c).

Total column (c).

Divide the **Total** of column (c) by the **Total** of column (a).

The weighted average in column (d) is _____.

In addition to the rates, each bidder shall attach an amortization schedule in a format similar to that shown in Appendix 2 for the amounts and terms specified in 1.1 using their bid rates. The first payment will be interest only and will be calculated based on the actual number of days from the financing date to the first Payment Date. Thereafter, there will be level debt service.

There will be no changes, other than the rates, amounts, and Equipment descriptions, to the standard Lease documents to be prepared by the County for this financing, which are attached to the solicitation as Appendix 3

Howard County is exempt from all local, state, and federal taxes, and prices stipulated by the Contractor are considered maximum and are not subject to any increase due to any taxes, or any other reason. The County's Tax Exemption Number is 30001219.

**THE PERSON SIGNING THE PRICE PAGE MUST INITIAL ANY
ALTERATIONS IN FIGURES IN INK.**

SIGNATURE: _____ DATE: _____

PRINTED NAME: _____ TITLE: _____

DOCUMENT G

CONTRACTOR'S QUALIFICATION INFORMATION

COMPANY NAME: _____

1. **FINANCIAL ADEQUACY:** The Contractor shall demonstrate the financial ability to carry out this Contract by providing copies of or links to:

- For privately-held companies, a Compilation Report by a Certified Public Accountant of the most recent Financial Statements of the bidder. If the compiled statements are more than six months old, the bidder shall also provide interim statements which include a certification by the Chief Financial Officer (or equivalent officer) that the interim statements are accurate and reliable.
- For publicly-held enterprises, an Audited Report by a Certified Public Accountant of the most recent Financial Statements of the bidder. If the audited statements are more than six months old, the bidder shall also provide interim statements which include a certification by the Chief Financial Officer (or equivalent officer) that the interim statements are accurate and reliable.

2. **QUALIFICATION CONDITIONS:** The Contractor shall, in the County's reasonable judgment:

- a. possess the ability, capacity and skill to perform its obligations under the Lease and the documents to be executed in connection therewith;
- b. possess the appropriate character, integrity, reputation, judgment, and experience to fully perform all of its obligations under the Lease;
- c. possess sufficient financial resources to perform fully its obligations under the Lease;
- d. have not been terminated for default or failed to provide funding when due under any lease-financing program within the last three years; and
- e. if a Contractor does not possess sufficient financial resources of its own, provide an unconditional, irrevocable commitment from Lessor's Designee (a third-party lessor providing the required financial resources) to provide funding for this Lease using the Lease documentation, without modification. This commitment must be provided with the bid. The selection and use of Lessor's Designee is subject to approval of the County.

- Contractors shall provide such information and certifications, upon the advice of counsel, as the County shall deem sufficient to establish compliance with the conditions enumerated in subparagraphs (a) through (e) above.
- If the Lease is to be assigned, the bidder must also provide similar financial statements for the assignee.
- The County may, at its discretion, obtain a financial report from Dun and Bradstreet for the bidder and any assignee. The County may also confirm the status of the firm with the Maryland State Department of Assessments and Taxation.

3. **SIMILAR ENGAGEMENTS/CLIENT REFERENCES**

- Each bidder must submit with its bid a brief description (including terms and amounts) of similar financings that were successfully performed for other clients or for the County in the past three years. At least three such clients must be identified by name, address, telephone number, and contract reference. The County reserves the right to contact these and any other known clients.

- Each bidder must disclose any lease financings that were terminated by either the Contractor or the County within the last three years and state the reason for the termination. This disclosure should include the client name, address and telephone number, and contract reference.
- Each bidder must disclose any instances of its failure to provide funding when due under any lease financing within the last three years and state the reason for such failure.

4. REFERENCES: Give name, address, and telephone number of owner or manager of three accounts for which Contractor has provided equipment financing services during the past three years.

4.1.	Account Name	Contract Completion Date
	_____	_____
	Owner/Manager	Telephone
	_____	_____
	Address	Email
	_____	_____
	_____	_____
	_____	_____
4.2.	Account Name	Contract Completion Date
	_____	_____
	Owner/Manager	Telephone
	_____	_____
	Address	Email
	_____	_____
	_____	_____
	_____	_____
4.3.	Account Name	Contract Completion Date
	_____	_____
	Owner/Manager	Telephone
	_____	_____
	Address	Email
	_____	_____
	_____	_____
	_____	_____

5. The Contractor has provided the above services for ____ years. (Note: three year minimum)

COMPANY NAME: _____

6. Please check off each item “Yes” or “No”:

<u>YES</u>	<u>NO</u>	
		1. We have completed and attached the Price Page with fixed rates for each term and calculated the weighted average.
		2. We have completed and attached an amortization schedule.
		3. We agree to the terms and conditions in Document E of this solicitation.
		4. We agree to use the County’s lease documentation without changes except for rates, amounts and equipment descriptions.
		5. We certify that we possess sufficient financial resources to perform the Lease obligations, OR we have provided a <u>current</u> , unconditional, irrevocable commitment from a third party to provide lease funding at the bid rates and to use the County’s current Lease documentation without modification. (Document G, Number 2.)
		6. We have attached a copy of (or a link to) our most recent Audited Financial Statements, or a Compilation Report of our most recent Financial Statements as required by Document G number 1.
		7. We have attached the information required by Document G number 1 relating to similar engagements and client references.
		8. We have completed and attached the Bid/Proposal Affidavit.

Failure to properly respond and fully comply with the requirements for this Invitation for Bids may result in your bid being eliminated from consideration.

In compliance with the solicitation and with all terms and conditions set forth therein, the undersigned represents that he/she has full authority to submit the above bid and to bind his/her principal to the obligations contemplated thereunder with no further approvals required (e.g. by a Credit Committee)

DOCUMENT H

AFFIDAVIT

(Must be completed, signed, and submitted with the bid.)

Contractor _____

Address _____

Telephone _____ Bid Number _____

I, _____, the undersigned, _____ of the above named Contractor
does

(Print Signer's Name)

Print Office Held)

declare and affirm this _____ day of _____, _____, that I hold the aforementioned office in the
(Month) (Year)

above named Contractor and I affirm the following:

AFFIDAVIT I

The Contractor, his Agent, servants and/or employees, have not in any way colluded with anyone for and on behalf of the Contractor or themselves, to obtain information that would give the Contractor an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Contractor, or themselves, to gain any favoritism in the award of the contract herein.

AFFIDAVIT II

No officer or employee of Howard County, whether elected or appointed, has in any manner whatsoever, any interest in or has received prior hereto or will receive subsequent hereto any benefit, monetary or material, or consideration from the profits or emoluments of this contract, job, work or service for the County, and that no officer or employee has accepted or received or will receive in the future a service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally, nor has any such officer or employee of the County received or will receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable to the County in connection with this contract, job, work, or service for the County, excepting, however, the receipt of dividends on corporation stock.

AFFIDAVIT III

Neither I, nor the Contractor, nor any officer, director, or partners, or any of its employees who are directly involved in obtaining contracts with Howard County have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state, or of the federal government for acts of omissions committed after July 1, 1977.

AFFIDAVIT IV

Neither I, nor the Contractor, nor any of our agents, partners, or employees who are directly involved in obtaining contracts with Howard County have been convicted within the past 12 months of discrimination against any employee or applicant for employment, nor have we engaged in unlawful employment practices as set forth in Section 12.200 of the Howard County Code, or of Section 16 of Article 49B of the Annotated Code of Maryland or, of Sections 703 and 704 of Title VII of the Civil Rights Act of 1964.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavits are true and correct to the best of my knowledge, information and belief.

DATE

SIGNATURE

PRINTED NAME

APPENDIX 1

EQUIPMENT QUOTES



Alban Tractor Co. Inc.

November 22, 2010

Cindy Cameron
Howard County Central Fleet
2350 Marroittsville Road
Marriottsville, MD 21104

Ms. Cameron,

Alban Tractor Co. Inc. would like to offer the same terms and conditions as the **Montgomery County Contract # 9367000254-CS** for the purchase of **(1) New 2011 Caterpillar 329DL Hydraulic Excavator**

The following factory and dealer options are included:

- * Regional Pkg, Regulated (NACD), 347-1732
- * R-boom/ 10'6" Stick, 340-7745
- * Cab-roops, Deluxe (70/30), 357-1061
- * Track, 32" Tg (glt), 351-9700
- * Mirrors, Cab, External, 347-0295
- * Rear View, Mirrors(rh), 343-1182
- * Starting, Cold Weather, 348-4888
- * Guard,track Guide, Full Length, 228-5517
- * Bumper, Side, Rubber, 337-1724
- * ansul fire suppression,
- * sentinel shutdown ,
- * rubber pads, installed,
- * coolant heater,
- * boom mounted light,
- * 5 lb fire extinguisher,
- * am/fm radio,
- * manuals,
- * cwt contractors grapple, 275-6073

SALE PRICE	\$262,690.00
5 YEAR / 12,500 HOUR TM WARRANTY	20,300.00
5 YEAR / 12,500 HOUR MAINTENANCE PLAN	65,573.00

TOTAL SALE PRICE	\$348,563.00
-------------------------	---------------------

5 YEAR / 12,500 HOUR REPURCHASE PRICE	\$118,250.00
--	---------------------

Annapolis Jct., MD
Felton, DE

Baltimore, MD
Dumfries, VA

Delmar, MD
Manassas, VA

Edgewood, MD
Sterling, VA

La Plata, MD
Winchester, VA

Myersville, MD

We believe the equipment as quoted will exceed your expectations. On behalf of Alban Tractor Co. Inc., thank you for the opportunity to quote Caterpillar machinery.

Sincerely,



Brent D. Stewart
Governmental Sales Manager



Alban Tractor Co. Inc.

November 22, 2010

Cindy Cameron
Howard County Central Fleet
2350 Marriotsville Road
Marriottsville, MD 21104

Ms. Cameron,

Alban Tractor Co. Inc. would like to offer the same terms and conditions as the **Montgomery County Contract #9367000254-CS** for the purchase of **(1) New 2011 Caterpillar 950H Wheel Loader**

The following factory and dealer options are included:

- * Steering, Ccs, 244-3922
- * Pp13: 3v, Ride, Lsd Frnt, Qc, 334-0431
- * Omission, Tires And Rims, 132-9336
- * Pkg C : Communications, 328-9884
- * Pkg D: Cold Start (120v), 334-0437
- * Pkg I: Work Lighting, 328-9882
- * Pkg Q: Power Traction Pkg, 335-5328
- * Pkg N: Top Protection, 339-8185
- * Pkg A: Comfort, 334-0434
- * Pkg O: Industrial, 339-8182
- * Joystick, 3 Valve, 243-1946
- * ansul fire suppression,
- * senitnel shutdown,
- * rubber cutting edge,
- * 23.5 x 25 flexport tires,
- * manuals,
- * amber strobe light,
- * cwt 6.0 cyd gp bucket w/top clamp,
- * am/fm radio,
- * 5lb fire extinguisher,

SALE PRICE	\$306,869.00
5 YEAR / 12,500 HOUR TM WARRANTY	16,790.00
5 YEAR / 12,500 HOUR MAINTENANCE PLAN	70,155.00
TOTAL SALE PRICE	\$393,814.00
5 YEAR / 12,500 HOUR REPURCHASE PRICE	\$144,300.00

Annapolis Jct., MD
Felton, DE

Baltimore, MD
Dumfries, VA

Delmar, MD
Manassas, VA

Edgewood, MD
Sterling, VA

La Plata, MD
Winchester, VA

Myersville, MD

We believe the equipment as quoted will exceed your expectations. On behalf of Alban Tractor Co. Inc., thank you for the opportunity to quote Caterpillar machinery.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent", with a horizontal line underneath.

Brent D. Stewart
Governmental Sales Manager

APPENDIX 2

HEAVY EQUIPMENT LEASE-PURCHASE FINANCING

SAMPLE 5YR FORM OF AMORTIZATION SCHEDULE

DATE OF FINANCING: 3/1/11

TO EQUIPMENT LEASE-PURCHASE AGREEMENT

ANNUITY SCHEDULE

742,377.00

COST 00

PV OF ANNUITY 10.00 Periods 9.730412 8.779064
11,025.21

INTEREST 1.0000%

No. of Days in first period 182

DUE DATE	LEASE PAYMENT	INTEREST	PRINCIPAL	Principal Outstanding
				742,377.00
01-Aug-11	3,11.89	3,711.89	0.00	742,377.00
01-Feb-11	84,562.20	3,711.89	81,077.72	661,526.68
01-Aug-12	84,562.20	3,307.63	81,483.11	580,272.11
01-Feb-12	84,562.20	2,901.36	81,890.52	498,611.26
01-Aug-13	84,562.20	2,493.06	82,299.97	416,542.12
01-Feb-13	84,562.20	2,082.71	83,711.47	334,062.62
01-Aug-14	84,562.20	1,670.31	83,125.03	251,170.73
01-Feb-14	84,562.20	1,255.85	83,540.66	167,864.38
01-Aug-15	84,562.20	839.32	83,985.36	84,141.50
01-Feb-15	84,562.20	420.71	84,378.15	0.00
	766,771.69	22,394.73	742,377.00	

APPENDIX 3

HOWARD COUNTY, MARYLAND

EQUIPMENT LEASE-PURCHASE AGREEMENT

THIS EQUIPMENT LEASE-PURCHASE AGREEMENT is dated as of _____, 2010 (the "Lease"), by and between _____, having a principal place of business at _____ (the "Lessor") and **HOWARD COUNTY, MARYLAND** (the "County").

WITNESSETH

WHEREAS, County has determined that a present need exists for the acquisition of certain Equipment (hereinafter defined), and that County is authorized under the Constitution and laws of the State and its Charter to enter into this Lease for the purposes hereinafter set forth; and

WHEREAS, Lessor has agreed to finance the acquisition of the Equipment and to lease such Equipment to County upon the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and County agree as follows:

1. **Agreement to Lease.** Upon the terms and conditions contained in (a) this Lease, (b) the Invitation For Bid 2011-27 (the "IFB"), which is incorporated by reference herein and made a part hereof, and (c) Lessor's Bid dated _____, 2010 (the "Lessor's Bid"), which is incorporated by reference herein and made a part hereof, Lessor shall provide funds in the aggregate amount of \$742,377.00 to permit County's acquisition of Equipment in accordance with the Lease. The Bid Sheet portion of the Lessor's Bid is attached hereto as Exhibit A. Lessor agrees to lease to County, and County agrees to lease from Lessor for the Lease Term (hereinafter defined), the **(a) 2010 Caterpillar 329DL Hydraulic Excavator** (the "Excavator"), with listed options including (i) the five (5) year/12,500 hour warranty (the "Excavator Warranty"), (ii) the five (5) year/12,500 hour maintenance plan (the "Excavator Maintenance Plan"), and (iii) vendor repurchase price (at the end of five years or 12,500 hours) of \$_____ and **(b) 2010 Caterpillar 950H Wheel Loader** (the "Loader," and collectively with the Excavator, the "Equipment"), with listed options including (i) the five (5) year/12,500 hour warranty (the "Loader Warranty," and collectively with the Excavator Warranty, the "Equipment Warranties"), (ii) the five (5) year/12,500 hour maintenance plan (the "Loader Maintenance Plan," and collectively with the Excavator Maintenance Plan, the "Equipment Maintenance Plans"), and (iii) repurchase price (at the end of five years or 12,500 hours) of \$_____ as such terms are more particularly described in Exhibit A.

2. **Lease Term.** This Lease will become effective upon the execution hereof by County and Lessor as of the date first above written. Lessor shall provide the required financing in the amount of \$742,377.00 and complete the acquisition of the Equipment no later than _____. The term of this Lease (the "Lease Term") will commence on the date the Equipment is accepted pursuant to Section 3, and unless earlier terminated as expressly provided for in this Lease, will continue for five (5) years through _____. The Lease Term will terminate (a) if applicable, upon the purchase of the Equipment by the County; (b) upon payment by County of the Lease Payments (hereinafter defined) required to be paid by County hereunder with respect to the Equipment; or (c) as otherwise provided in this Lease. Upon termination of the Lease Term as a result of the occurrence of either of the events specified in (a) or (b), above, the Lease will terminate with respect to such Equipment, the security interest, if any, of the Lessor in such Equipment shall terminate, and County will acquire full and unencumbered title to such Equipment free and clear of all liens and encumbrances created by or arising through or under Lessor and upon request by County, Lessor agrees to execute and deliver to County such documents, in form and substance satisfactory to Lessee, to evidence such transfer of title and the termination of Lessor's security interest or other interest in the Equipment related to such Lease.

3. Acquisition of Equipment; Delivery of Equipment; and Payment of Equipment Costs. The County hereby assigns to Lessor, its rights to purchase the Equipment pursuant to the Purchase Agreement with Alban Tractor Inc. Lessor agrees to finance the acquisition of the Equipment at the terms in the amortization schedule. The Equipment shall be delivered to the County at the Alpha Ridge Landfill, 2350 Marriottsville Road, Marriottsville, Maryland 21104. County will accept the Equipment after the County's inspection and a determination by the County, in its sole discretion, of the satisfactory condition and operation of the Equipment. County will evidence its acceptance of the Equipment by executing and delivering to Lessor a certificate indicating such acceptance (the "Acceptance Certificate") in the form attached hereto as Exhibit B. Lessor agrees to make moneys available to pay the acquisition cost of the Equipment when required.

4. Lease Payments.

(a) Subject to the execution of the Acceptance Certificate and Section 5 hereof, County agrees to pay to Lessor or its assignee pursuant to Section 19 hereof, the Lease Payments, equal to the amounts specified in Exhibit C. A portion of each semi-annual Lease Payment is paid as, and represents payment of, interest. The Lease Payments will be payable without notice or demand, except for the invoices hereinafter provided, at the office of Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and will commence on the first Lease Payment due date (the "Due Date") as set forth in Exhibit C. Lessor shall prepare and submit to the Director of Finance at the address set forth herein, semi-annual invoices for the Lease Payments reflected on Exhibit C. Each invoice submitted for payment shall include on its face the Lessor's Federal Tax Identification Number, the Lessor's complete address, and the date and amount of the total invoice.

(b) Lessor and County understand and intend that the obligation of County to pay the Lease Payments required hereunder shall constitute a current expense of County, subject to appropriated funds, and shall not in any way be construed to be a debt of County in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by County, nor shall anything contained in this Lease constitute a pledge of the general tax revenues, funds, or moneys of County beyond those appropriated for the purpose of acquiring the Equipment.

(c) The County Executive reasonably believes that legally available funds can be obtained sufficient to make all Lease Payments during each Lease Term, and hereby covenants that he will do all things lawfully within his power to obtain, maintain, and pursue funds from which the Lease Payments may be made, including making provision for such payments to the extent necessary in each budget proposed for the purpose of obtaining funding, and that he will use his bona fide best efforts to obtain appropriation of the necessary funds to avoid termination pursuant to Section 5 hereof by taking all reasonable action to seek adequate budgeted funds to maintain each Lease in force. It is the intent of the County Executive to make the Lease Payments for the full Lease Term of the Lease if funds are legally available therefore, and in that regard, County represents that the use of the Equipment is essential to its proper, efficient, and economic operation.

5. Non-appropriation of Funds; Substitution. In the event sufficient funds are not appropriated in any fiscal period for Lease Payments due hereunder, then County will immediately notify the Lessor or its assignee of such occurrence and the Lease Term for the Equipment shall terminate on the last day of the fiscal period for which appropriations were authorized, without penalty or expense to County of any kind whatsoever. In the event of such termination, County agrees to peaceably surrender possession of such Equipment to Lessor or its assignee on the date of such termination. Lessor will have all legal and equitable rights and remedies to take possession of such Equipment upon such termination.

6. Limitation on Warranties.

(a) County acknowledges and agrees, that the Equipment has been selected by the County; that County is satisfied that the Equipment is suitable for its purpose; that Lessor is neither a manufacturer nor a vendor of the Equipment; and that LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE

MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF COUNTY, OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO, AND LESSOR SHALL NOT BE OBLIGATED OR LIABLE FOR ANY ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO COUNTY OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE MAINTENANCE THEREOF.

(b) Lessor hereby assigns to County during the Lease Term, so long as no Event of Default (as hereinafter defined) has occurred and is continuing, all manufacturers' warranties, if any, express or implied, with respect to the Equipment, and Lessor authorizes County to obtain the customary services furnished in connection with such warranties at County's expense, and shall cooperate fully with County with respect to the resolution of any claims against such warranties.

7. Representations and Warranties.

(a) County represents and warrants as of the date hereof, and at all times during the respective Lease Term that (i) the County is a duly constituted political subdivision of the State of Maryland and is a Charter County and a Maryland body corporate and politic created pursuant to Article XI-A of the Constitution of the State of Maryland and Article 25A of the Annotated Code of Maryland, as amended; (ii) the execution, delivery, and performance by the County of this Lease, and all other documents executed in connection herewith by County (all such documents shall be collectively referred to herein as the "Lease Documents"), have been duly authorized by all necessary action on the part of the County; (iii) the Lease documents constitute legal, valid, and binding obligations of the County enforceable in accordance with their respective terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws and equitable principles affecting the enforcement of creditor's rights generally; (iv) the execution and performance of the Lease Documents will not materially violate any judgment, order, law, or regulation applicable to County or result in the creation of any lien, charge, security interest, or other encumbrance upon the Equipment (other than as contemplated by this Lease), or any assets of the County that would result in a material breach of, or constitute a material default under any indenture, mortgage, deed of trust, bank loan, credit agreement, or other instrument to which County is a party or by which it or its assets may be bound; (v) there are no actions, suits, or proceedings pending or, to the knowledge of the County, threatened against or affecting County in any court or before any governmental commission, board, or authority, which, if adversely determined, will have a material, adverse effect on the ability of County to perform its obligations under the Lease Documents; and (vi) no more than 10% of the total use of any portion of the Equipment leased shall be used, on an average yearly basis, directly or indirectly in any trade or business carried on by any person other than County or be used by an organization described in Section 501(c)(3) of the Code, provided that such private business use, if any, that is not related or disproportionate to the governmental use shall not exceed 5% of the total use of such Equipment on an average yearly basis.

(b) As a condition precedent to the funding thereof by Lessor, County shall deliver to Lessor: (1) an opinion of County's counsel in form and substance reasonably acceptable to Lessor as to the validity of the statements made in subsections (i) through (v), above; and (2) such other documents and certificates as shall be reasonably requested by the Lessor. In addition, County shall deliver to Lessor: (1) a certificate of a duly authorized officer of County respecting the validity of the statements made in subsection (vi) above; and (2) an opinion of bond counsel in form and substance reasonably acceptable to Lessor as to the excludability from gross income of the interest component of the Lease payments under the laws of the United States and the State and other related matters.

8. Title. Upon County's acceptance of the Equipment, title to the Equipment will vest in County; provided, however, that (i) in the event of termination pursuant to Section 5 hereof; or (ii) upon the occurrence of an Event of Default hereunder, as long as such Event of Default is continuing beyond the Cure Period, title to the Equipment will immediately vest in Lessor or its assignee.

9. **Security Interest.** In order to secure all of its obligations hereunder, County hereby (i) grants to Lessor a first priority security interest in any and all right, title, and interest of County in: (a) the Equipment, and in all additions, attachments, and accessions thereto and substitutions thereof; and (b) to the extent allowed by applicable law, any proceeds (including the proceeds of any insurance policy) of the foregoing; (ii) agrees that this Lease may be filed by Lessor at its expense as a financing statement evidencing such security interests; and, (iii) agrees to execute and deliver all financing statements, certificates of title, and other instruments reasonably necessary to evidence such security interest.

10. **Personal Property.** The Equipment is and will remain personal property.

11. **Use; Repairs.** County will use the Equipment in a careful manner consistent with the use generally contemplated by the manufacturer of the Equipment and will comply with material laws, ordinances, insurance policies, and regulations relating to, and will pay all valid costs, claims, damages, fees, and charges arising out of, its possession, use, or maintenance of the Equipment. The Lease includes the acquisition of the Equipment Warranties and the Equipment Maintenance Plans for the Equipment to be performed by Alban Tractor Co. Inc., which the County agrees to utilize during the term of the Lease.

12. **Alterations.** County will not make any alterations or additions to the Equipment that will result in a material reduction in its value without Lessor's prior written consent or unless such alteration or addition may be readily removed without damage to the Equipment.

13. **Inspection.** Upon not less than three (3) business days written notice to the County (to the attention of Wayne Souder, Superintendent; Alpha Ridge Landfill; 2350 Marriottsville Road; Marriottsville, Maryland 21104 and Fleet Administration, 9250 Bendix Road, Columbia, Maryland 21044), the Lessor will be entitled to inspect the Equipment or observe its use and operation during normal business hours. Any such inspection shall be in compliance with County's security procedures. County shall not be responsible for any injury to any person or property during any such inspection unless directly caused by County's gross negligence or willful conduct.

14. **Liens and Taxes.** County shall keep the Equipment free and clear of all levies, liens, and encumbrances except those created under this Lease. The parties contemplate that the Equipment will be used for a governmental purpose of County and that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession, or acquisition of the Equipment is found to be subject to taxation, County shall pay when due during the Lease Term, to the extent of available appropriated funds, all charges and taxes (local, State, and federal), that now or hereafter may be imposed upon the ownership, leasing, rental, sale, purchase, possession, or use of the Equipment, excluding, however, all federal and State taxes on or measured by Lessor's or its assignee's income and any federal, state or local income, succession, transfer, franchise, profit, excess profit, capital stock, gross receipts, corporate, or other similar tax payable by Lessor, its successors or assigns, unless such tax is made as substitute for any tax, assessment or charge which is the obligation of County under this Section. If County fails to pay said charges and taxes when due, and after delivery of written notice to County, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes for which County is liable under this Lease, County shall reimburse Lessor therefor, subject only to the availability of appropriated funds.

15. **Risk of Loss; Damage, Destruction, and Condemnation; Use of Net Proceeds.**

(a) Until County executes the Acceptance Certificate, Lessor assumes all risk of loss of, or damage to, the Equipment from any cause whatsoever. After the date of the Acceptance Certificate, County assumes all risk of loss of, or damage to, the Equipment from any cause whatsoever, and no such loss of, or damage to, the Equipment, defect therein, or unfitness or obsolescence thereof shall relieve County of its obligation to make Lease Payments or to perform any other obligation hereunder. Notwithstanding the foregoing, Lessor shall be responsible for any loss of, or damage to, the Equipment that is proximately caused by Lessor's actions during any inspection.

(b) If, prior to the termination of the Lease Term, (i) the Equipment or any portion thereof is destroyed (in whole or in part), or is damaged by fire or other casualty; or (ii) title to, or the temporary use of, the Equipment or any part thereof or the estate of County or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm, or corporation acting under governmental authority; or (iii) for any other reason, the Equipment or any portion thereof is no longer in the possession and control of County; County shall, at its option and subject to appropriation, repair, restore, or replace the affected Equipment with equipment of equivalent value, or purchase the affected Equipment on the Due Date (as set forth in Exhibit C) next succeeding the date of such loss at the Principal Outstanding amount applicable on such Due Date, plus the Lease Payment due on such date, plus any past due amounts then payable by County hereunder with respect to such items of Equipment. Upon any such payment, the Lease Term with respect to such Equipment shall terminate, and County will acquire full and unencumbered title to such Equipment. Within sixty (60) days of the happening of any of the events described in clauses (i), (ii), and (iii) of the first sentence of this paragraph, County shall give notice to Lessor and any assignee with respect to such Equipment of such event and how County proposes to comply with the provisions of the first sentence of this paragraph.

(c) If appropriated funds are not available to permit County to repair, restore, replace, or purchase such Equipment in accordance with subsection (b) of this Section 15, County shall cause, to the extent allowed by applicable laws, the Net Proceeds (defined herein) of any commercial insurance claim or condemnation award to be applied to the payment of County's obligations under this Lease. Any portion of the Net Proceeds in excess of the amount required to pay in full County's obligations as set forth in this subsection shall be for the account of County. County agrees that if the Net Proceeds are insufficient to pay in full County's obligations hereunder, County shall, to the extent of appropriated funds, make such payments to the extent of any deficiency.

16. Insurance. At its own expense, subject to appropriated funds, County shall self-insure, or at its option, commercially insure, the Equipment against loss or damage that is not otherwise covered by the Equipment Maintenance Plan or the Equipment Warranties. County is self-insured for sudden and accidental property loss for \$100,000 per occurrence. Losses in excess of \$100,000 per occurrence are subject to excess coverage through the Local Government Insurance Trust, a governmental pool, and the limits and conditions set forth therein. All excess coverage for loss or damage shall provide, to the extent allowed by applicable law, that losses, if any, shall be payable to Lessor and County, as their interests may appear, and in the event that the Equipment suffering a loss or damage is not repaired, restored, replaced, or purchased pursuant to Section 15 hereof, the Net Proceeds of the commercial insurance required hereby shall be, to the extent allowed by applicable law, applied as provided in Section 15 hereof. As used herein, "Net Proceeds" means, to the extent allowed by applicable law, the amount remaining from the gross proceeds of any insurance claim or condemnation award after deduction of expenses (including reasonable attorney fee) incurred in the collection of such claim or award. At the request of Lessor, but in no event more than once per calendar year, County shall provide written evidence of coverage.

17. Indemnification. To the extent of the provisions of the Maryland Local Government Tort Claims Act ("LGTC"), Section 5-301 et seq. of the Courts and Judicial Proceedings Article, Maryland Annotated Code, and subject to the availability of funds in the County's Risk Management Fund and in an amount not to exceed the value of the Equipment, County will indemnify Lessor and save it harmless from and against any and all claims, judgments, damages, settlements and costs, including reasonable attorney's fee, if applicable, actually incurred at rates normally charged to Lessor by its attorneys for similar work, arising from or relating to the negligent act or omission of County, or its officers, agents, volunteers and employees arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, possession, use, operation, rejection, or return, and the recovery of claims under insurance policies thereon, unless any such action is based upon the negligence, illegal act, breach of duty, or intentional tort committed by the Lessor its officers, agents, volunteers or employees. For any claim that otherwise would fall within the scope of the LGTCA, if the claim had been asserted against the County directly pursuant to the LGTCA, the County's obligations shall not be greater than the liability that might be determined under the LGTCA.

As a condition of indemnification, Lessor agrees to notify County, of any suits, claims or potential claims within ten (10) days of its own notice of such suits, claims or potential claims. Further, County may, at its sole discretion, provide legal defense for the Lessor in lieu of providing indemnification for reasonable attorney's fee for counsel selected by the Lessor. The forgoing indemnification is not to be deemed as a waiver of any immunity that may exist in any action against County or its officers, agents, volunteers and employees.

18. Intentionally Deleted.

19. Assignment.

(a) Without Lessor's prior written consent, County will neither (i) assign, transfer, pledge, hypothecate, grant any security interest in, or otherwise dispose of this Lease, any Equipment, or any interest in this Lease or the Equipment; nor (ii) sublet or lend the Equipment.

(b) With County's prior written consent which in its sole discretion may be withheld, Lessor may assign, in whole, or in part, its rights, title, and interest in and to this Lease, including the Equipment, and any other documents executed with respect to this Lease, grant or assign a security interest in this Lease and the Equipment. Any such assignee shall have all of the rights but none of the obligations of Lessor under this Lease other than the obligation to provide funds to County in the aggregate amount specified herein. Subject to the preceding sentence, the term Lessor as used herein shall include any such assignees. Subject to the foregoing, this Lease shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto. Before assignment of any portion of Lessor's interest in this Lease, Lessor will cause written notice of such assignment to be sent to County which will be sufficient if it discloses the name of the assignee and the address to which further payments hereunder should be made. No further action will be required by Lessor or by County to evidence the assignment of rights hereunder, but County will acknowledge any such permitted assignment in writing if so requested. County shall retain notice of such assignment and maintain a record that identifies the owners of Lessor's interest in this Lease. Upon County's receipt of written notice of Lessor's assignment of any portion of its interest in this Lease, County agrees to attorn to and recognize such assignee as the owner of such portion of Lessor's interest in this Lease, and County thereafter shall make such payments, including without limitation, such Lease Payments as are indicated in the notice of assignment, directly to such assignee; provided, however, that any such permitted assignment of a right to receive payment hereunder shall be accomplished in accordance with County's instructions, if any, regarding invoicing or other processing of Lease Payments.

(c) The County has not prepared an official statement or other offering materials in connection with this Lease and does not intend to prepare such materials. The Lessor shall not use certificates of participation or other fractional shares of the Lease Payments in connection with the Lease.

20. Event of Default. If County fails to make any Lease Payment as it becomes due in accordance with the terms of this Lease (except as such failure results from nonappropriation by the County of funds for such purposes) such nonpayment shall be an "Event of Default" if and only if the Lessor shall have given the County prior written notice of the default (the "Notice of Default") and thirty (30) days (the "Cure Period") to cure the default specified in such notice, or cause such default to be cured, unless the Lessor and County shall agree to an extension of such time prior to its expiration:

21. Remedies. Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing beyond the Cure Period, Lessor, at its option, may declare this Lease to be in default by written notice to such effect to the County, and thereafter Lessor may exercise any one or more of the following remedies:

(a) by written notice to County, declare an amount equal to all amounts then due or to become due during the then current fiscal year of County under this Lease to be immediately due and payable, whereupon the same shall become immediately due and payable;

(b) request County to (and County agrees that it will), promptly return the Equipment to which the Event of Default applies to Lessor, and to the extent allowed by applicable laws, Lessor may enter upon the premises where such Equipment is located and take immediate possession of and remove all or any portion of the same;

(c) exercise any other right, remedy, or privilege that may be available to it under applicable laws of the State of Maryland or any other applicable law, or proceed by legal action to enforce the terms of this Lease or to recover damages for the breach of this Lease, or to rescind this Lease as to the Equipment.

Any assignee of Lessor shall only have the right to declare the Lease in default and exercise the remedies described in paragraphs (a) through (d) above to the extent of the Equipment which Lessor has assigned to such assignee and the Lease Payments and Equipment described thereon.

In addition, County will remain liable, to the extent permitted by law and to the extent of then currently available appropriated funds, for all covenants and indemnities under this Lease and for all reasonable legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor. Except as specifically provided herein, the remedies conferred upon or reserved to Lessor shall not be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. Lessor's remedies hereunder may be exercised separately with respect to items of Equipment. No delay or omission to exercise any right or power accruing upon the occurrence of any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

22. Lessor's Right To Perform for County. Except as provided in Sections 5, 26 and 27, if County fails to perform or comply with any of its material covenants contained herein, Lessor shall have the right, but shall not be obligated, to effect such performance or compliance of its material covenants, and the amount of any reasonable out-of-pocket expenses or other reasonable expenses of Lessor incurred in connection with the performance of, or compliance with, such material covenant, together with interest thereon at the lesser of (i) the highest lawful rate permitted by applicable State law on the date of payment by Lessor; or (ii) the same rate on the underlying Lease Payments shall be payable by County to the extent of then currently available appropriated funds, upon demand. County shall execute, endorse, and deliver to Lessor any conveyance, assignment, or other instrument in writing as may be reasonably required to vest in Lessor any right, title, or power that by the terms hereof is intended to be conveyed or conferred upon Lessor, including without limitation, (a) Uniform Commercial Code Financing Statements (including continuation statements); (b) to the extent allowed by applicable law, documents and checks or drafts relating to or received in payment for any loss or damage on the insurance required hereunder, but only to the extent that same relates to the Equipment; and (c) at such time of default or nonappropriation, upon any bill of sale, document, instrument, invoice, freight bill, bill of lading, or similar document relating to the Equipment in order to vest title in Lessor and to transfer possession to Lessor within ten (10) days upon receipt of same.

23. Quiet Enjoyment of Equipment. Lessor hereby covenants to provide to County during the term of this Lease quiet use and enjoyment of the Equipment and County shall during the term of this Lease peaceably and quietly have and hold and enjoy the Equipment without suit, trouble, or hindrance from Lessor except upon the occurrence of an Event of Default.

24. Delivery of Related Documents. County will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transactions contemplated by this Lease. At the request of the Lessor, County will furnish current audited financial statements of County within thirty (30) days after the date such statements become available to the public; provided, however, to the extent County makes such audited financial statements generally made available to the public, this requirement shall be satisfied. During the Lease Term and upon annual request of the Lessor, County will provide to Lessor the applicable budget, or relevant portions thereof at County's election, with proof of appropriation for the ensuing fiscal year, and such other

financial information relating to the ability of County to continue this Lease as reasonably may be requested by Lessor.

25. Covenants. County and Lessor each specifically covenants that they shall comply with the provisions of the Code, including, without limitation, compliance with any provisions of such law regarding the timing of the expenditure of the proceeds of this Lease, the use of such proceeds, the restriction of investment yields, the filing of information with the Internal Revenue Service, and the rebate of certain earnings resulting from the investment of the proceeds of this Lease. County and Lessor each further covenants that it shall make such use of the proceeds of this Lease, regulate the investment of the proceeds thereof, and take such other and further actions as may be required to maintain exclusion from gross income for federal tax purposes of the interest portion of the Lease Payments. Both County and Lessor shall each provide such certification of facts and estimates regarding the amount and use of the proceeds of this Lease as may be necessary from time to time to comply with, or to evidence its compliance with, the covenants set forth in this Section.

26. Termination for Cause. If Lessor (a) fails to fulfill its obligation under this Lease to provide funds sufficient to pay the Equipment Cost as described in Section 3 hereof properly and on time, County may terminate this Lease by written notice to Lessor; or (b) otherwise violates any provision of the Lease, County may terminate this Lease by written notice to Lessor. The notice shall specify the acts or omissions relied upon as cause for termination. Lessor shall pay County the actual amount of damages caused by Lessor's breach. Lessor will remain liable after termination of this Agreement and County can affirmatively collect damages.

27. Termination for Convenience. The performance of this Lease may be terminated by County in accordance with this clause, in whole or in part, whenever the County shall determine that such termination is in the best interest of County.

28. Contingent Fee Prohibition. Lessor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for Lessor, to solicit or secure this Lease, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on the making of this Lease.

29. No Conflict of Interest. Lessor certifies that this Lease does not constitute a conflict of interest in accordance with the provisions of Section 901(a) of the Howard County Charter and Section 22.204 of the Howard County Code regarding conflicts of interest, attached hereto as Exhibit D and made a part of this Agreement.

30. Political Contribution Disclosure. The Lessor shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

31. Retention of Records. If requested by County, Lessor shall deliver to the County background material prepared or obtained by Lessor incident to the performance of this Lease. "Background Material" shall include, but not be limited to, work papers, notes, completed questionnaires, other printed materials, pamphlets, maps, drawings, and books acquired by Lessor during the term of this Lease and directly related to the services provided under this Lease. Any proprietary computer programs of Lessor are expressly excluded from the definition of "Background Material" as used in this Section. Lessor shall maintain records and documents relating to the performance of this Lease for three years following final payment under any Lease Term or any applicable statute

of limitations, whichever is longer, and shall make such records available for inspection and audit by the authorized representatives of County.

32. Nondiscrimination in Employment. The Lessor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

33. Compliance with Laws. Lessor hereby represents and warrants that
(a) it is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified;

(b) it is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or Howard County, Maryland, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Lease;

(c) it shall comply with all federal, State, and local laws applicable to its activities and obligations under this Lease; and

(d) it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Lease.

34. Administration. This Lease shall be performed under the direction of the _____ (the "Contract Officer"). All matters relating to administration and performance of this Lease shall be referred to the Contract Officer for determination.

35. Governing Law. This Lease shall be construed, interpreted, and enforced in accordance with the laws of the State of Maryland.

36. Notices. All notices (excluding invoices and communications in the ordinary course of business) to be given under this Lease shall be in writing and mailed by certified mail, return receipt requested, at the address below or at such address as the party may provide in writing from time to time:

Lessor:

Attn: _____

County:

3430 Court House Drive

Ellicott City, Maryland 21043

Attn: Director of Finance

With a copy to:

Fleet Administration

9250 Bendix Road

Columbia, Maryland 21044

37. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

38. Entire Agreement; Modification; Severability. This Lease, including the Invitation for Bids and Lessor's Bid, together with all other Lease Documents, constitute the entire agreement between the parties with respect to the lease of the Equipment, and neither the Lease nor any of the Lease Documents shall be modified, amended, altered, or changed except with the written consent of Lessor and County. If any terms contained in any

earlier writing, agreement, or proposal conflict with the terms and conditions of this Lease, the terms and conditions of this Lease shall control. Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease. This Lease may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Lease shall become effective when each of the Lessor and the County shall have received counterparts thereof signed by the other party.

39. Representations. Each party to this Lease represents and warrants to the other that it has full right, power, and authority to execute this Lease.

sample

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the day and year first above written.

ATTEST:

LESSOR:

By: _____
Name
Title

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____(SEAL)
Ken Ulman
County Executive

I. APPROVED:

APPROVED as to form and legal sufficiency
This _____ day of _____, 201_____.

James M. Irvin, Director
Department of Public Works

Margaret Ann Nolan
County Solicitor

APPROVED FOR SUFFICIENCY OF FUNDS:

Sharon F. Greisz, Director
Department of Finance

EQUIPMENT LEASE-PURCHASE AGREEMENT
Exhibit A
[Insert Bid Sheet]

sample

EQUIPMENT LEASE-PURCHASE AGREEMENT

Exhibit B

Form of Acceptance Certificate ACCEPTANCE CERTIFICATE

I, the undersigned, hereby certify that I am the duly qualified and acting officer of the Lessee identified below and, with respect to the Equipment referenced herein and the Equipment Lease-Purchase Agreement dated as of _____, 2010 (the "Lease"), by and between _____, having a principal place of business at _____ and HOWARD COUNTY, MARYLAND that

1. The Equipment described below has been delivered in accordance with Lessee's specifications and the Lease is in good working order and is fully operational and has been fully accepted by Lessee on the date indicated below.

1) One (1) 2010 (New) Caterpillar 950H Wheel Loader bearing Registration Mark ____ and manufacturer's serial number [INSERT SERIAL NUMBER], together with the Loader Warranty and the Loader Maintenance Plan (as such terms are defined in the Lease).

2) One (1) 2010 (New) 329DL Hydraulic Excavator bearing Registration Mark ____ and manufacturer's serial number [INSERT SERIAL NUMBER], together with the Excavator Warranty and the Excavator Maintenance Plan (as such terms are defined in the Lease).

2. Attached are (a) evidence of insurance with respect to the Equipment in compliance with Section 16 the Agreement, (b) Vendor invoice(s) and/or bill(s) of sale relating to the Equipment, and (c) financing statements executed by Lessee as debtor and/or the original certificate of title or manufacturer's certificate of origin and title application, if any, for any Equipment which is subject to certificate of title laws.

3. Rental Payments shall be due and payable by Lessee on the dates and in the amounts indicated in the Payment Schedule below. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease during the current Fiscal Year of Lessee. Such moneys will be applied in payment of all such Rental Payments due and payable during such current Fiscal Year. Lessee anticipates that sufficient funds shall be available to make all Rental Payments due in subsequent Fiscal Years.

[Insert schedule of Payments]

4. Lessee hereby authorizes and directs Lessor to fund the Acquisition Cost of the Equipment at the time the Equipment becomes available by paying at such time the portion of the Acquisition Cost included as part of the invoice price to the Vendor.

5. This Acceptance Certificate constitutes final acceptance of the Equipment identified above. Lessee certifies that upon payment in accordance with paragraph 4 above and subject to vendor's repurchase of the Equipment at the end of the Lease term, Lessor shall have fully and satisfactorily performed all of its covenants and obligations under the Lease.

HOWARD COUNTY, MARYLAND

By its Department of Public Works

Approved:

Fleet Administrator

By: _____(SEAL)
James M. Irvin, Director

Chief of Environmental Services

EQUIPMENT LEASE-PURCHASE AGREEMENT

Exhibit C

[Insert Equipment and lease payment terms]

Tax-exempt financing in the aggregate principal amount of \$742,377.00 for the acquisition of the following:

- 1) 2010 (New) Caterpillar 950H Wheel Loader plus a five (5) year/12,500 hour warranty, a five (5) year/12,500 hour maintenance plan, and vendor repurchase price (at the end of five years or 12,500 hours) of \$_____.*
- 2) 2010 (New) 329DL Hydraulic Excavator plus a five (5) year/12,500 hour warranty, a five (5) year/12,500 hour maintenance plan, and vendor repurchase price (at the end of five years or 12,500 hours) of \$_____.*

The Aggregate Principal Amount to be amortized semi-annually using the following terms on a tax-exempt basis:

Amount - \$742,377.00

Term – 5 Years

Interest Only Payment Date – 08/01/2011

Number of Principal and Interest Payments – 9

First Principal and Interest Payment Date – 2/1/2012

Final Principal and Interest Payment – 2/1/2016

30/360 convention

sample

EQUIPMENT LEASE-PURCHASE AGREEMENT

Exhibit D

Howard County Charter

Section 901. Conflict of Interest.

(a) *Prohibitions.* No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) *Rules of construction; exceptions by Council.* The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) *Penalties.* Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Howard County Code

Section 22.204. Prohibited Conduct and Interests.

(a) *Participation Prohibitions:* County official and employees subject to this subtitle shall not:

(1) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate on behalf of the county in any matter which would, to their knowledge, have a direct financial impact as distinguished from the public generally, on them, their spouse, parent, child, sibling or upon any business interest with which they are affiliated;

(2) Except as exempted by the county council pursuant to Section 901(b) of the Howard County Charter, hold or acquire an interest in a business entity that has or is negotiating a contract with the county or is regulated by the official or employee;

(3) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate in any matter involving a business entity with which they, their spouse, parent, child or sibling are negotiating or have an arrangement concerning prospective employment.

(b) *Employment Prohibitions:* Except as exempted by the county council pursuant to section 901(b) of the Howard County Charter or when the employment or interest does not create an actual or apparent conflict of interest, officials and employees shall not:

(1) Be employed by:

(I) Any entity subject to their official authority;

(ii) Any entity subject to the authority of the Howard County agency, board or commission with which they are affiliated;

(iii) Any entity which is negotiating or has entered into a contract with the Howard County agency, board or commission with which they are affiliated.

(2) Represent any party for a fee, commission or other compensation before any county body;

(3) Within 1 year following termination of county service, act as a compensated representative of another in connection with any specific matter in which they participated substantially as a county official or employee.

The employment provisions listed above do not apply to:

(1) An official or employee who is appointed to a regulatory or licensing authority pursuant to a requirement that persons subject to its jurisdiction be represented in appointments to it;

(2) Subject to other provisions of law, a member of a board or commission who publicly disclosed a financial interest or employment to the appointing authority at the time of appointment;

(3) Employees or officials whose duties are ministerial, provided that the private employment or financial interest does not create a conflict of interest or the appearance of such a conflict.

(c) *Solicitation/Acceptance of Gifts or Compensation:* No employee or official shall solicit any gifts. No employee or official shall accept any gift or compensation, directly or indirectly from any person that he/she knows or has reason to know, has financial interests, distinguishable from the interest of the public, that would be affected by the actions of the employee or official.

(d) *Use of Prestige of Office:* No county officials or employees subject to this subtitle shall intentionally use the prestige of their office for their own gain or that of another. The performance of usual and customary constituent services without additional compensation does not constitute the use of prestige of office for an official or employee's private gain or that of another.

(e) *Disclosure of Confidential Information:* Other than in the discharge of official duties, officials or employees may not disclose or use, for their own gain or that of another, confidential information acquired by reason of public position and which is not available to the public.

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